

# **COMMUNITY DEVELOPMENT BLOCK GRANT**

## **General Terms and Conditions**

### **1. Conflict of Interest: Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials**

No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

### **2. Legal Remedies Provision**

All construction contracts shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. The Contractor is referred to the General Conditions of these Contract Documents, which contain detailed provisions concerning breach of contract and remedies for breach of contract.

### **3. Termination Provision**

All construction contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor. The Contractor is referred to the General Conditions of these Contract Documents, which contain detailed provisions concerning termination of the contract.

### **4. Nondiscrimination Clause - Section 109, Housing and Community Development Act of 1974**

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

### **5. Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age**

No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

### **6. Section 504 of the Rehabilitation Act of 1973, as amended - Nondiscrimination on the Basis of Handicap**

No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

## **7. Executive Order 11246 Clause**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advisor the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1964, and such other sanctions may be imposed and remedied involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, That in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractors and subcontractors are required to submit Equal Opportunity Certification Forms (See Attachments 1 and 2).

## **8. Section 3 Clause Compliance in the Provision of Training, Employment, and Business Opportunities**

- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.
- d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors or assigns to those sanctions specified by the grant or loan agreement of contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

Contractors and subcontractors are required to submit Section 3 Certification Forms (See Attachments 3 and 4) and Section 3 Plans with Table A and Table B (See Attachment 5).

## **9. Copeland "Anti-Kickback" Act Provision**

All construction contracts shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor and subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

Specific contract requirements concerning this provision are included in the Federal Labor Standards Provisions-HUD Form 4010, included as Attachment 6 to this section of the Contract Documents, and which form a portion of these Contract Documents and the executed contract between the grantee and Contractor.

## **10. Davis-Bacon Act Provision**

All construction contracts, in excess of \$2,000, shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors and subcontractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors and subcontractors shall be required to pay wages not less often than once a week. The grantee shall report all suspected or reported violations to the grantor agency.

Specific contract requirements concerning this provision are included in the Federal Labor Standards Provisions-HUD Form 4010, included as Attachment 6 to this section of the Contract Documents, and which form a portion of these Contract Documents and the executed contract between the grantee and Contractor. A copy of the current prevailing wage determination(s) issued by the Department of Labor is included as Attachment 7 to this section of the Contract Documents and the award of a contract shall be conditioned upon acceptance of the wage determination(s). Contractors and subcontractors are required to submit Labor Standards Certification Forms (See Attachments 8 and 9).

## **11. Contract Work Hours and Safety Standards Act Provision**

Contracts awarded in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations contained in 29 CFR Parts 3, 5 and 5a.

Under Section 103 of the Act, the Contractor and any of his subcontractors shall be required to compute the wages of every mechanic and laborer on the basis of standard work week of forty hours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any work week.

Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety, as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

Specific contract requirements concerning this provision are included in the Federal Labor Standards Provisions-HUD Form 4010, included as Attachment 6 to this section of the Contract Documents, and which form a portion of these Contract Documents and the executed contract between the grantee and Contractor.

## **12. Access to Records and Record Retainage Clause**

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following close out in compliance with 4 NCAC 19L Rule .0911, Recordkeeping.

The North Carolina Department of Commerce, the North Carolina Department of the Treasurer, U. S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

### **13. Clean Water, Clean Air, E.O. 11738 and EPA Regulations Provision**

Compliance with Air and Water Acts: This agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

The Contractor and any of its subcontractors for work funded under this Agreement which is in excess of \$100,000, agree to the following requirements:

- (1) A stipulation by the contractor or subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c) (1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

### **14. Lead-Based Paint Clause**

The Contractor is hereby specifically made aware of the DOC lead-based paint regulations, 4 NCAC 19L, Rule .1011, which are applicable to the construction or rehabilitation of residential structures. To the extent that the subject matter of this contract involves residential structures, the Contractor will comply with the lead-based paint regulations.

### **15. Lobbying Clause**

Required by Section 1352, Title 31, U.S. Code

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 16. Certification of Eligibility

By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 29 CFR 5.12(a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3(a) of the Davis-Bacon Act.

No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 29 CFR 5.12(a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3(a) of the Davis-Bacon Act.

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001 and 18 U.S.C. 1010.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address or P. O. Box)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
Tax Identification or Social Security Number

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The GSA List of Parties Excluded from Federal Procurement or Non-procurement Programs has been checked on \_\_\_\_\_(date) and the above contractor or subcontractor has been determined to be eligible to participate in a CDBG assisted project.

\_\_\_\_\_  
(Signature of Verifying Officer)

\_\_\_\_\_  
(Grantee Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(CDBG Number)

<b>U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</b>	
<b>CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY</b>	
<b>INSTRUCTIONS</b>	
<p>This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause: and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.</p>	
<b>CERTIFICATION BY BIDDER</b>	
NAME AND ADDRESS OF BIDDER (include ZIP Code)	
1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. _____ Yes _____ No	
2. Compliance reports were required to be filed in connection with such contract or subcontract. _____ Yes _____ No	
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100. _____ Yes _____ No      _____ None Required	
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? _____ Yes _____ No	
NAME AND TITLE OF SIGNER (Please type)	
SIGNATURE	DATE

Replaces Form HUD 4238.CD-1, which is Obsolete

<b>U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</b>  <b>CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY</b>	
NAME OF PRIME CONTRACTOR	PROJECT NUMBER
<p style="text-align: center;"><b>INSTRUCTIONS</b></p> <p>This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause: and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the subcontractor has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the owner approves the subcontract or permits work to begin under the subcontract.</p>	
<b>CERTIFICATION BY SUBCONTRACTOR</b>	
NAME AND ADDRESS OF SUBCONTRACTOR (include ZIP Code)	
1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. _____ Yes _____ No	
2. Compliance reports were required to be filed in connection with such contract or subcontract. _____ Yes _____ No	
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100. _____ Yes _____ No      _____ None Required	
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? _____ Yes _____ No	
NAME AND TITLE OF SIGNER (Please type)	
SIGNATURE	DATE

Replaces Form HUD 4238.CD-2, which is Obsolete



**CERTIFICATION OF BIDDER REGARDING SECTION 3  
AND SEGREGATED FACILITIES**

\_\_\_\_\_  
Name of Prime Contractor

\_\_\_\_\_  
Project Name & Number

The undersigned hereby certifies that

- (a) Section 3 provisions are included in the Contract.
- (b) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

\_\_\_\_\_  
Name & Title of Signer (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING**  
**SECTION 3 AND SEGREGATED FACILITIES**

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Project Name & Number

The undersigned hereby certifies that

- (a) Section 3 provisions are included in the Contract.
  
- (b) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

\_\_\_\_\_  
Name & Title of Signer (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### **SECTION 3 AFFIRMATIVE ACTION PLAN**

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the project area.

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the project area the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To insure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To insure that all appropriate project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.
- J. To list on Table A information related to subcontracts to be awarded.
- K. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representatives of \_\_\_\_\_  
(Name of Contractor)

We the undersigned have read and fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**PROPOSED SUBCONTRACTS BREAKDOWN**

**TABLE A**

FOR THE PERIOD COVERING \_\_\_\_\_ 19 \_\_\_\_ through \_\_\_\_\_ 19 \_\_\_\_.  
(Duration of the CDBG-Assisted Project)

Column 1 Type of Contract (Business or Profession)	Column 2 Total Number of Contracts	Column 3 Total Approximate Dollar Amount	Column 4* Estimated Number of Contracts To Project Area Businesses	Column 5* Estimated Dollar Amount To Project Area Businesses

\*The Project Area is coextensive with the boundaries of \_\_\_\_\_

\_\_\_\_\_  
Company

\_\_\_\_\_  
Project Name

\_\_\_\_\_  
Project Number

\_\_\_\_\_  
EEO Officer (Signature)

\_\_\_\_\_  
Date

**ESTIMATED PROJECT WORKFORCE BREAKDOWN**

**TABLE B**

Column 1	Column 2	Column 3	Column 4	Column 5
Job Category	Total Estimate Positions	# Positions Currently Occupied By Permanent Employees	# Positions Not Currently Occupied	# Positions To Be Filled By LIPAR*
OFFICERS/ SUPERVISORS				
PROFESSIONALS				
TECHNICIANS				
HOUSING SALES/ RENTAL/MANAGEMENT				
OFFICE CLERICAL				
OTHERS				

TRADE:

JOURNEYMAN				
HELPERS				
APPRENTICES				
MAXIMUM # TRAINEES				
OTHERS				

TRADE:

JOURNEYMAN				
HELPERS				
APPRENTICES				
MAXIMUM # TRAINEES				
OTHERS				

TRADE:

JOURNEYMAN				
HELPERS				
APPRENTICES				
MAXIMUM # TRAINEES				
OTHERS				

TOTAL				
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\*Lower Income Project Area Residents.

Individuals residing within the Project Area whose family income does not exceed 80% of the median family income of the county.

\_\_\_\_\_  
Company

## **FEDERAL LABOR STANDARDS PROVISIONS**

### **Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i). Minimum Wages.** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**(ii). (a).** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

**(1).** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2).** The classification is utilized in the area by the construction industry; and

**(3).** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b).** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c). In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d). The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraph (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii). Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv). If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i). Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonable anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)



(ii). (a). The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b). Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1). That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

(2). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c). The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d). The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii). The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

**4. (i). Apprentices and Trainees. Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid

at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii). Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level or progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymen wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii). Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by referenced in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1,3, and 5 are herein incorporated by reference in this contract.

**9. Disputed concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i). Certification of Eligibility.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii).** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii).** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in sub-paragraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**3. Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**4. Subcontracts.** The contractor or subcontractor shall insert any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.**

**1.** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**2.** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

**3.** The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**HUD-40**

**WAGE DECISION(S)**

**Insert Wage Decision(s) Provided By the Community  
Development Administrator**

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
CONTRACTOR'S CERTIFICATION  
CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS**

TO (Appropriate Recipient):	Date:
C/O:	Project Number (if any):
	Project Name:

1. The undersigned, having executed a contract with \_\_\_\_\_  
for the construction of the above-identified project, acknowledges that:

- (a) The Labor Standards provisions are included in the aforesaid contract:
- (b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility.

2. He certifies that:

- (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United State pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).
- (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:

- (a) The legal name and the business address of the undersigned are:

(b) The undersigned is:		
(1) A Single Proprietorship	(3) A Corporation Organized in the State of	
(2) A Partnership	(4) Other Organization (Describe)	
(c) The name, title and address of the owner, partners or officers of the undersigned area:		
Name	Title	Address

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- (d) The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (if none, so state):

Name	Address	Nature of Interest

- (e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state):

Name	Address	Trade Classification

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**WARNING**

U.S. Criminal Code Section 1010, Title 18, U.S.C., provides in part: "Whoever . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."